THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 18539 of 2005

DATE: 05-03- 2007

Between :

V.V.Subba Rao

… Petitioner

And

The Chief Manager,
State Bank of India,
Tanuku Branch,
West Godavari District and 3 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 18539 of 2005

ORDER:

The writ petitioner is holding a Savings Bank Account with the third respondent-Bhimavaram Cooperative Urban Bank Limited, Tanuku. On 12-03-2005, the petitioner presented a self cheque for withdrawal of Rs.5.00 lakhs from his account. Instead of making payment in cash, the third respondent Bank issued a banker's cheque (bearing No.968934 dt. 12-03-2005) drawn on State Bank of India, Tanuku informing the petitioner orally that Rs.5.00 lakhs in cash was not immediately available.

On the same day, i.e. 12-03-2005, the petitioner went to State Bank of India, Tanuku (first respondent herein) for encashment of the said Banker's Cheque. However, by that time, the State Bank of India (for short, 'SBI') was closed and therefore, the petitioner had presented the Banker's Cheque with the Vani Co-operative Urban Bank Limited, Tanuku (fourth respondent) for clearance.

Surprisingly, the Banker's Cheque was returned by the fourth respondent on 15-03-2005 with an endorsement "refer to drawer" stating that SBI, Tanuku did not honour the cheque on the ground that Reserve Bank of India (for short, 'RBI') had imposed moratorium on the transactions of the 3rd respondent Bank w.e.f. 12-3-2005. When the petitioner approached the third respondent to find out the reasons, he was informed that the moratorium imposed by the Reserve Bank of India on the transactions of the third respondent Bank came into force only after the banking hours of 12-03-2005. Since the petitioner was issued the Banker's Cheque during the working hours around 11.00 A.M. on 12-03-2005, the third respondent Bank expressed that the State Bank of India, Tanuku ought not to have stopped payment on the ground of moratorium imposed by Reserve Bank of India. Accordingly the 3rd respondent addressed letters to both State Bank of India, Tanuku and Reserve Bank of India explaining that the

transaction in question was a genuine transaction which took place in the morning hours of 12-03-2005 much prior to commencement of the moratorium imposed by the Reserve Bank of India and recommending payment to the petitioner. In spite of the same, the Banker's Cheque, dated 12-03-2005 was not honoured, but on the other hand the petitioner was informed by the 3rd respondent by letter dated 17-6-2005 that the Reserve Bank of India had directed it to cancel the banker's cheque dated 12-03-2005 purchased by the petitioner and credit the proceedings to his Savings Bank Account.

Aggrieved by the said action, this writ petition is filed to declare the action of the respondents as arbitrary and illegal and consequently to direct the respondents to make the payment to the petitioner by honouring the banker's cheque dated 12-03-2005 issued by the 3rd respondent.

In the counter affidavit filed by the third respondent, the version of the petitioner has not been disputed and it is reiterated that the moratorium imposed by the Reserve Bank of India came into effect only after the banking hours on 12-03-2005.

The first respondent-State Bank of India in its counter affidavit stated that the Banker's cheque, which was presented by the petitioner with the fourth respondent Bank was received by it only on 14-03-2005 through the third respondent Bank and since by that time the moratorium imposed by the Reserve Bank of India upon the transactions of the third respondent Bank have already come into force, the banker's cheque was returned by it with an endorsement "refer to drawer". It is contended that since the moratorium had been in operation on 14-03-2005, on which date it had received the banker's cheque, it had rightly declined to honour the same.

The second respondent - Reserve Bank of India, in its counter affidavit stated that having regard to the weak financial position of the third respondent Bank, in exercise of powers under Section 35-A of Banking Regulations Act, 1949, (for short 'the Act') the Reserve Bank of India in public interest issued directions dated
12-03-2005 imposing restrictions on the operations of the third respondent Bank by precluding the said Bank from grant or renew of any loans and advances, make any investments, incur liability including borrowal of funds and acceptance of fresh deposits, disburse or agree to disburse any payment whether in discharge of its liability and obligations or otherwise, unless specifically approved in writing by

the Reserve Bank of India. The 3rd respondent Bank was also restricted from making repayment of deposits exceeding Rs.500/-. The said restrictions were enforced after the banking hours on 12-03-2005. Hence the writ petitioner, who had presented the banker's cheque for collection after the directions of the Reserve Bank of India had come into force, was not entitled to receive the payment. It is contended that though the banker's cheque was issued to the petitioner during the banking hours on 12-03-2005, since the petitioner failed to present the same before the State Bank of India, Tanuku for collection during the banking hours on 12-03-2005, he is not entitled for payment.

I have heard the learned counsel for both the parties.

As could be seen from the pleadings of the respective parties, it is not in dispute that the restrictions (moratorium) imposed by the Reserve Bank of India in exercise of the powers under Section 35-A of the Act, restraining the third respondent Bank from making disbursements without obtaining the approval of the Reserve Bank of India in writing, have come into force after the banking hours of 12-03-2005. It is relevant to note that
12-03-2005 being a Saturday, the banking operations of the third respondent Bank were closed at 12 noon. Admittedly, the petitioner had presented the self cheque for withdrawal of amount from his Savings Account with the third respondent Bank during the banking hours at 11 A.M. on 12-03-2005 and the third respondent Bank issued a Banker's cheque before 12 noon on 12-03-2005. The fact that the petitioner was issued the Banker's cheque during the banking hours on 12-03-2005 i.e. prior to enforcement of moratorium imposed by the Reserve Bank of India is not disputed by any of the respondents. However, the fact remains that the said Banker's cheque was presented by the petitioner with the fourth respondent for clearing after the enforcement of moratorium on the 3rd respondent's transactions. It is also an admitted fact that the 1st respondent - State Bank of India had received the said Banker's cheque only on 14-03-2005 by which time, the moratorium has already came into force.

Having regard to the above facts which are not in dispute the question that arises for consideration is whether the 1st respondent (SBI) was justified in dishonouring the Banker's cheque issued by the 3rd respondent on the ground of restrictions/ moratorium imposed by

Reserve Bank of India on the transactions of the 3rd respondent.

For proper appreciation of the controversy involved, it is necessary to note the definition of Cheque under Section 6 of the Negotiable Instruments Act, 1881, which runs as under :

> ***"6. Cheque:--*** *A "Cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.*
> ***Explanation I. --*** ...."

The Bill of Exchange has been defined under Section 5 of the Negotiable Instruments Act, 1881 as under :

> *"**5. "Bill of Exchange".—** A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.*
> *... ...."*

The Bill of Exchange has also been defined under Section 3 of the Bills of Exchange Act, 1882 as under:

> *"**3. Bills of exchange defined :--** (1) A bill of exchange is an unconditional order in writing, addressed by one person to another signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or the order of a specified person or to bearer.*
> *(2) ... .*
> *(3) ... .*
> *(4) ... ."*

If the definition of Cheque is read with the definition of Bill of Exchange, it can be understood that a Cheque is an instrument in writing, containing an unconditional order, signed by the maker, directing a specified banker to pay on demand a certain sum of money only to or to the order of a certain person or to the bearer of the cheque.

There can be no dispute that the Banker's Cheque is also a Bill of Exchange. It is issued by one Bank directing the Drawee Bank to pay on demand a certain sum of money to a certain person or to the

bearer.

In the case on hand, the 3rd respondent being the maker of the Banker's cheque in question is the drawer, whereas the 1st respondent who is directed to pay the amount is the drawee. The petitioner to whom the money is directed to be paid is the payee as per the respective definitions under Section 7 of the Negotiable Instruments Act, 1881.

Admittedly, the Banker's cheque in question was issued to the petitioner during the banking hours on 12-3-2005 in lieu of the payment in cash against the self-cheque presented by him for withdrawal of the amount from his savings account with the 3rd respondent.

It is also the specific case of the petitioner that Rs.5,00,000/- covered by the Banker's cheque was debited from his savings account with the 3rd respondent during the banking hours on 12-3-2005 itself. It is also not in dispute that the 3rd respondent bank is holding an account with the Drawee Bank - State Bank of India, Tanuku and sufficient funds are available as on 12-3-2005 and even on 14-3-2005. The 1st respondent (SBI) did not dispute the fact that the banker's cheque presented with the 4th respondent was cleared by the 3rd respondent through the clearing house. In the circumstances, it is clear that the entire transaction was completed on 12-3-2005 itself during the banking hours i.e., prior to enforcement of moratorium.

It is also relevant to note that there is absolutely no dispute with regard to the petitioner's title to the amount covered by the Banker's cheque which was issued in lieu of cash payment. It is an unconditional order signed by the 3rd respondent directing the State Bank of India to pay on demand a certain sum of money to the petitioner. Hence, the Banker's cheque in question is nothing but an instrument similar to demand draft for money and the petitioner shall be treated as the purchaser of a demand draft.

As held by the Division Bench of Bombay High Court in TUKARAM BAPUJI v. BELGAUM BANK[1] in such circumstances the relationship of the purchaser of a draft and the bank from which that draft was purchased shall be that of the debtor and the creditor.

Since the 3rd respondent by issuing the Banker's cheque in

question during the banking hours on 12-3-2005 had undertaken the liability to pay Rs.5,00,000/- to the petitioner in cash on presentation of the said cheque in the drawee bank, the 1st respondent is bound to honour the same. The fact that the moratorium was in operation by the date of the presentation of the Banker's cheque with the fourth respondent and by the date of its receipt by the 1st respondent - Drawee Bank is immaterial and the 1st respondent cannot refuse payment on that ground.

The Writ Petition is accordingly allowed holding that the action of the respondents in stopping payment of the amount covered by the Banker's cheque dated 12-3-2005 is illegal. No costs.

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G. Rohini, J.

Dt. 05–03-2007

gbs

[1] AIR 1976 BOMBAY 185